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May 20, 1996

Mr. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; CC Docket No. 96-98; Notice of Proposed Rulemaking adopted April 19, 1996 ("NPRM")

Comments on Access to Rights-of-Way (NPRM 96-220-225)

Dear Mr. Caton:

Carolina Power & Light Company ("CP&L") herewith respectfully submits its comments and responses to the Commission's questions concerning access to rights-of-way under Section 224 of the Pole Attachments Act (the "PAA"), as amended by the Telecommunications Act of 1996 (the "Act"). Because the Commission may make judgments about the application of the PAA to incumbent local exchange carriers under §251(b) of the Act ("LECs") that may in turn be applied broadly to utilities bound by the PAA, CP&L seeks to present its views in this proceeding to share with the Commission some potential and likely adverse consequences of rules that might work for LECs but that would impose undue and costly burdens on electric utilities. There are significant differences in the services provided by LECs and electric utilities on the poles, ducts, conduits and

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rights-of-way they have acquired and built for their services, and a generic or “one size fits all” approach to rulemaking is not practical or workable.

CP&L is a publicly traded, investor-owned electric utility, based in Raleigh, North Carolina, serving approximately 1.1 million customers in North and South Carolina. CP&L generates, transmits and distributes electricity over poles, conduits, ducts and rights-of-way acquired for its electric business. CP&L has been operating in the Carolinas since 1908.

Comments

Summary

The Telecommunications Act of 1996 provision mandating access to utility poles, conduits, ducts, and rights-of-way and establishing a subsidized cable television pole attachment rate for new attachments by telecommunications carriers constitutes a taking of private property without just compensation. In keeping with the Congressional intent to open telecommunications to competition and market forces, the Commission should adopt rules that permit the marketplace to work first, permitting the utilities and parties requesting attachments to work out the rates, terms and conditions of access to poles and rights-of-way, and, failing agreements or to check abuses, if any occur, to regulate the process on a case-by-case complaint basis.

CP&L’s experience with a shared cable policy is that the marketplace works and that multiple carriers who seek to offer competitive telecommunications services can be accommodated on already crowded facilities in a way that serves the goal of competition in

telecommunications services and the utilities' objective to provide safe, economic and reliable electric service.

Nondiscriminatory Access - Section 224 (f1)

CP&L's view is that the mandatory access provision and the subsidized rate provisions constitute a taking of private property without just compensation, in violation of the Fifth Amendment to the Constitution. CP&L should not be mandated by new legislation to allow access to CP&L property. CP&L is willing to negotiate contracts with telecommunications carriers that would allow them to utilize our facilities upon reasonable rates, terms, and conditions. Indeed, CP&L has done this successfully with a number of carriers in our service area.

Nondiscriminatory Access Limitations - Section 224 (f2)

Insufficient Capacity. Accommodating attachment requests from new competing carriers probably means installing taller poles to provide sufficient space. CP&L and many other electric utilities are evaluating their distribution system standards to set limits on the heights of poles we and they can economically install for other companies' requirements without jeopardizing safety and reliable electric service. The electric distribution system is vital to the public well being and must be constructed so that maintenance, operation, and power restoration can be accomplished expeditiously. An elaborate infrastructure has been constructed to deploy electric service to all customers because electricity is an essential requirement of modern society. CP&L's and other electric utilities' fleet of trucks generally cannot operate and maintain poles that are taller than 45 feet. The protective fusing systems, put in place to protect people and property, cannot be worked

easily on poles taller than 45 feet. The electric utilities should not be forced to jeopardize their infrastructure for the communications industry.

Reasons of Safety, Reliability, and General Applicable Engineering Purposes. Electric distribution poles are designed to support electric conductors. This design takes into consideration many factors such as wind loading and ice loading. Multiple communications conductors on these poles add stress that cannot be anticipated in the initial design. An example of the disastrous effects additional attachments can have on poles was noticed in the wake of the destruction of Hurricane Hugo. The poles were designed to withstand wind velocities greater than were experienced during the storm, but hundreds of poles broke even though the winds never reached the wind speeds planned for in the design criteria. One underlying reason is that multiple additional attachments had been added since the pole lines were designed and constructed. With the addition of multiple communication companies also comes the addition of multiple risers on the poles. This situation can many times make the poles unsuitable for climbing, which condition further inhibits the electric utility from safely and economically operating its system.

The FCC's Role in Establishing Regulation to Quantify Reasons to Deny Access. The FCC should not impose regulation which would set levels of "minimum or quantifiable" threat to reliability in order to deny access to poles. This regulation would put the FCC in the role of setting standards for all utilities' poles virtually on a pole by pole basis. These standards are not presently the same for all utilities and they should not be the same because construction specifications differ depending on geography, weather conditions, and construction methods. Accordingly, a generic rule is probably unworkable and impractical. Moreover, the FCC should not impose a general "burden

of proof' on the utilities that deny access. It is the responsibility of the utility to use its engineering judgment and expertise, gained from many years of operating experience, to determine what constitutes sufficient capacity, safety, and sound engineering practices. Of course, if the requesting carrier believes that a utility has denied access unreasonably, the carrier should be permitted to resort to the complaint procedures the Commission has established under the PAA heretofore. Then, on a case-by-case basis, the Commission can determine the appropriate burdens of proof required to resolve the particular dispute.

CP&L believes that there are three guiding principles the FCC should take into account in any proposed rule. First, the allocation of space should be based on the pole owner's need. The pole owner has invested capital to put this pole in place for its present and future needs, and the owner should not be penalized by others who seek pole access if the owner's needs for that pole change over time. Second, the allocation of space should be based on and in compliance with the long-standing joint use agreements and in recognition of joint investments in poles that many of the telephone companies and electric companies have had in place for many years. Third, allocation of remaining space should be provided to the new telecommunications carriers on a first-come, first-served policy.

A "Shared Cable" Model

To address the problem of the finite capacity resources and to avoid the costs and delays associated with replacement of existing facilities to install taller poles to create more space, CP&L developed a shared fiber optic cable policy in 1994. The policy achieves two purposes: (1) it helps the utility manage its distribution system for the basic purpose for which the system was constructed, safe and reliable electric service, and (2) it facilitates competition, permitting multiple carriers to

“share” dark fiber capacity in a single cable built on existing poles and rights-of-way. Three small carriers, including competitive access providers, have availed themselves of economical fiber capacity that might not have been available if each had requested to attach its own fiber optic cable.

The basic elements of CP&L’s shared cable policy, which might serve as a useful model for other utilities and carriers faced with capacity restraints are:

(a) It is more economical to use existing poles and conduits than having to rebuild taller/larger facilities to accommodate more users.

(b) The cost benefit of using one cable to accommodate multiple carriers is even more significant than the very expensive alternative of each carrier building and maintaining its own cable facility. The electric utility can provide shared facilities to promote greater electric system safety and reliability; minimize time to restore critical electric and telecommunications services that may be hampered by multiple telecommunications attachments; ensure access to poles, etc. by a greater number of telecommunications carriers who wish to compete; and minimize the cost and delay associated with rebuilding existing facilities to accommodate multiple attachments.

Notification of Modifications - Section 224 (h)

The notification of modifications provision sounds easy on the surface to implement; however, this provision will impact all distribution field engineering and line and service personnel and will significantly increase the pole owner’s cost of doing business. In the present environment, most electric utilities are working smarter, faster and with fewer employees. This provision unfairly burdens the pole owner with some form of notification and a time period for response which we call a “waiting period” before utility personnel can perform their daily work. CP&L is presently

implementing a program which will allow our construction forces to identify much of this work in the field and perform that work without ever getting a central engineering office involved. Our line and service crews will identify a pole replacement because of, for example, a new service to a house, they will replace that pole while they are at the job. This improved process will streamline our electric utility business, but does not allow for a "waiting period."

Reasonable Period of Time. In order for the electric utility to meet its service needs, CP&L suggests that the maximum amount of time required for response to a notification, if a time frame must be set, should be 48 hours notice, with an exemption for emergencies, pole replacements due to rotting poles or other unsafe conditions, and immediate service demands.

Proportionate Share of Cost. The party requesting the additional height should pay all of the additional cost which is over and above the original cost of the pole replacement.

Payment of Cost. The payment of cost should not be credited against any potential increase in "revenue" from pole rental because the pole rental for all parties will be reduced as other parties are added to the pole. Pole rental should not be considered "revenue" because, at the rate paid by cable television system operators, the rental is less than the cost to carry the pole in plant.

Passing on Cost to Attaching Entities. The attaching entity should pay for a share of the cost for modifications if the modification of the owner's pole would not have been necessary except for the foreign attachments on the pole. An important fact to remember is that the pole owner has invested capital to install the poles and did not request the other parties to attach. It allowed these attachments to be made and should not be penalized for this accommodation.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel L. Glosson".

Daniel L. Glosson
Distribution Planning and
Coordination Specialist